

The Role of the United Nations in the Fight against Terrorism: A Provisional Balance

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Since the beginning of the 1970s, the United Nations has been conscious of the problems created by terrorism. Since then, the attention that the United Nations has been giving to the phenomenon of terrorism has very much depended on the attention and the sensitivity of the so-called international community towards it. The recommended actions, always within the framework of respecting international law and the obligations of cooperation between States, that form the substance of the Charter, have been progressively acquiring a reinforcing and even obligatory character, as terrorism has widened both its battle area and its lethality. Today the set of measures for the fight against terrorism that is imposed, (because an imposition it is), by the United Nations to the 191 Member States form a solid, reasonable and forceful net. In spite of some initial hesitation, and of some enduring reluctance, today the political and doctrinal antiterrorist body of the UN forms an inexcusable point of reference at the time when at start of the 21st century, humanity is facing the most serious and visible security risk. The United Nations, so many times accused of being defenceless or inane when facing the problems of humanity, has clearly defined its role in the fight against terrorism. The following description should be contemplated keeping this perspective in mind.

By imposing legal generic obligations to the Member States, the promulgation of Security Council Resolution 1373 inaugurates a practically unknown territory in the political and legal tenure of the Organisation. States are now under an obligation to criminalise terrorism, its perpetrators, its accomplices and its financiers, in addition to ratifying the international antiterrorist conventions and transferring said conventions to domestic law. Resolution 1373 does not impose penalties to countries responsible for acts considered reprehensible by the Council

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or to those with whom they collaborate but rather decides on the conduct that all of the Member States must observe in the fight against terrorism. Naturally, it is not possible to exclude the possibility that the Council, presumably at the request of the Counter-Terrorism Committee (CTC), could eventually decide on the adoption of other measures against non-compliant States. That is not, however, the initial motive of Resolution 1373. And neither is the present state of its activities. The CTC, in the three years of its existence, has maintained an active and demanding correspondence with Member States. There have already been four series of reports requested and received from the Member States, with mixed results. Whereas the first requests for information were answered by all 191 members of the UN, successive requests have had a smaller number of responses, and today a third of the Member States are delayed in providing the corresponding answers. Nonetheless, it is evident that Resolution 1373 has contributed to the creation of an atmosphere where nobody today dares to doubt the obligation of all Member States to collaborate in the progressive harnessing of terrorist activity. And, as reviewed, it is not a declamatory obligation but rather one that is held legally and politically liable by the Security Council.

Since the beginning of its activities the CTC relied on a small number of experts and support staff. At the end of 2003 some of its members underscored the insufficiency of such means and the necessity to revitalise the Committee. A report to such effect was approved by the CTC on 19 February 2004. The report which proposed the creation of an antiterrorist executive directorate which would be headed by an Executive Director was endorsed unanimously by the Security Council in Resolution 1535, on the 26th of March of the same year. In complying with Resolution 1535 the Secretary General, with the approval of the Security Council, proceeded with the appointment of the Executive Director of the CTED on 18 May 2004. On June 28 2004, I took up the post. Since then I have concentrated my activities on what constitutes the fundamental and permanent part of my mandate - to propose work plans to the CTC, to put into practice its decisions, to develop plans of cooperation with States and international organisations, as well as the more urgent and immediate part - which it is to be able to recruit 20 experts and 14 administrative and technical support people for the Directorate. The CTED should to be "operational" in the first weeks of July 2005.

In the activity generated by the Security Council at the time of designing a global counter-terrorism strategy, one might emphasise the recent approval of two Resolutions. The first, Res. 1540 of 28 April 2004, contemplates with preoccupation the possibility of terrorists making use of weapons of mass destruction - chemical, biological and nuclear. The text of the Resolution, located under the obligatory authority of Chapter VII of the Charter, imposes a detailed series of obligations to

the Member States to avoid the terrorists, described here as "non-state actors", taking control of the said weapons. The Resolution creates a committee, a subsidiary organ of the Security Council, to oversee the fulfillment of its mandates.

Unlike other previous and later resolutions of the Council, Res. 1540 is not inspired nor motivated by any previous terrorist act and assumes a notable effort, for "legislating" events that the international community would avoid at all costs. It indicates a forceful disposition. The objective is to use all of the political and legal instruments that the Council has within its reach to close any gap that might exist within the international counter-terrorism action.

A second and more recent resolution of the Council also deserves to be mentioned. It is Res. 1566, approved unanimously under Chapter VII of the Charter on 8 October 2004. Its origin stems from a project presented by the Russian Federation after the terrorist attacks in Beslan in the Russian Republic of North Ossetia, in September 2004 which cost the lives of up to 350 people of whom 11 were members of the Russian Security Forces and 172 were children, students of the school where the attack took place. The Security Council, through its President, sharply condemned the attack, recalling that terrorism "constitutes one of the most serious threats against international peace and security", and adding that "all acts of terrorism are criminal and unjustifiable, no matter who commits the acts or the circumstances under which the acts were committed". The Resolution is within the guidelines marked by Res. 1373, but it also contains important new features in the development of the Council's counter-terrorist operations. In one part, it contains an outline of the definition of terrorism, along with an encompassing condemnation of both terrorism and attempted justifications of terrorism. It is a well known fact that the United Nations, after nearly four decades of trying, has been until now, incapable of reaching a consensus on the definition of terrorism. Resolution 1566 tries to undo this complicated Gordian knot with this text, found in the third operative paragraph:

"Recalls that criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose of provoking a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organisation to do or to abstain from doing any act, constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature, and calls upon all States to prevent such acts and, if not prevented, to ensure that such acts are punished by penalties consistent with their grave nature".

Resolution 1566 also establishes a working group "to consider and submit recommendations on practical measures to be imposed upon individuals; groups; or entities involved in or associated with terrorist activities, other than those designated by the Al Qaida/Taliban Sanctions Committee....." and "considers the possibility of establishing an international fund to compensate victims of terrorist acts and their families...". With this, two new avenues are opened in the set of UN counter-terrorism policies. One could end with a universal list of groups and individuals designated as terrorists. Another could eventually lead to the constitution of a fund to assist the victims of terrorism. The final version of Resolution 1566 differs from the original draft in the immediacy of the decisions: it will be a working group that studies both areas and puts forth the corresponding proposals to the Council. It is anticipated that the tasks of the working group will be neither easy nor straightforward. Yet with the three reviewed aspects, Resolution 1566 offers very significant advances in the ability of the Security Council to close the gaps in the system of international cooperation against terrorism.

The recent and intense activity of the Security Council with regard to terrorism should not overshadow the numerous occasions during the past 30 years in which the General Assembly has discussed that topic. What is noted in many forums, at times with silent reproach, is that the United Nations, and more specifically, the General Assembly, has not yet been able to agree upon a universal definition of terrorism, and that it has not yet been able to conclude a global Convention on Counter-Terrorism of which that definition would be a crucial part. In this regard, and since 1996, the GA has debated a draft which had its origin in a proposal by India and which, in practice, would be close to being finalised were it not for the persistent disagreements on the subject of the definition of terrorism. The difficulties of this are already known: for some, the term "terrorist" could be applied to what are called liberation movements and their components; for others, liberation movements and their components could feel authorised to use terrorist methods with impunity. Remember the familiar and cynical expression: "Your terrorist is my freedom fighter". A third difficulty comes from the interest of some countries in separating the norms of counter terrorism to warlike conflicts and to the armed forces in which they participate - an interest parallel to that which has been demonstrated by others to obtain the contrary.

In effect, to close the circle of global counterterrorism politics currently led by the UN, it would be positive to be able to rely on the aforementioned Convention as well as on the definition of terrorism. The difficulty of achieving this can be attributed to nothing else but the shifless will of the Member States, as well as to the output of the UN itself in this regard. But, at the same time, it would be maliciously incorrect to affirm that the Organisation cannot do anything to help States in the fight against terrorism or, more radically, that nothing can be done in the absence of a definition of terrorism. Both these assertions today contend with

a very different reality. For one thing, the absence of the definition of terrorism has not impeded the GA from proposing conventions and protocols against terrorism that today the Security Council has put forth as obligations to Member States, the latest being that of the adoption of the Suppression of Nuclear Terrorism Convention. These international instruments contain the description of all those acts associated with the commission of terrorist acts. For another, the evolution of the consciousness of the international community with regard to terrorism, as it is reflected in the decisions of the GA and the SC of the United Nations, allows for the conclusion that the tolerance of terrorism and its manifestations is minimal, if not completely absent. Beyond the terrorists themselves and their sympathisers, it is extremely rare to hear words of praise for or justification of terrorist actions. The discussion of the "deeper roots" of terrorism, so many times meant to hide pretences of justification, today uses discreet and careful tones, similar to the allowance of this rationale - the extent to which political, social or economic circumstances explain recourse to terrorist means or, alternatively, the use of those conditions by the terrorists to attempt to justify their actions - to be used in a reasonable and truthful way.

The differences, then, of the treatment of the subject of terrorism within the General Assembly and in the Security Council do not emanate from different focuses in the heart of the matter. They come from the differing "jurisdictional" perspectives: the "legislative" GA is now faced with the role of the SC which puts everything, or so it is thought, under the heading of "peace and security", which are the prerogative of the Security Council. In that tension, which contains so many positive elements, it is not difficult to find the echoes of compromised national sovereignties and of their argument in remembrance of the respect to "the matters which are essentially under the internal jurisdiction of States" that the Charter details in Article 2.7. The Security Council and its subsidiary organs attempt to "democratise" their deliberations with the regular announcement of sessions open to the rest of its Members. It could be said that the prudent generalisation of the system, within the framework of what is allowed by the Charter, and the establishment of real dialogues on the most burning issues of the moment, in which terrorism in all its implications occupies a preferential place, could contribute to somewhat stopping the flow of the displeasures of those who debate in the face of those who decide.

The contributions of the Secretary-General on the subject of terrorism in the policy of the United Nations should be added to those of the SC and the GA. In October 2001, a short time after the attacks of September 11 and almost simultaneously with the adoption of Resolution 1373 by the Security Council, Kofi Annan created an Advisory Group on the United Nations and Terrorism. The Group made 31 recommendations in August 2002, grouped in a "tripartite strategy" aimed at:

- a) Dissuading terrorist groups,
- b) Denying individuals or groups the means by which to carry out terrorist acts,
- c) Encouraging broad cooperation in the fight against terrorism.

The recommendations of the Advisory Group are valuable and interesting in themselves, and the extent to which they reflect the institutional view of the Organisation as subtly different than that of the Member States, offering an order of priorities which, without altering the fundamental meaning marked by the Council and the Assembly, presents diverse accents and highlights.

In addition to the contributions of this Group, the Secretary General decided to take a step forward and create a High-level Panel on Threats, Challenges and Change to generate new ideas about the kind of policies and institutions required for the UN to be effective in the 21st century. The High-level panel produced a very interesting report that was released in December 2004. Terrorism as a threat as well as the role of the United Nations in the fight against it, occupies a very important chapter of the report.

The report conceives and condemns terrorism as a method of political action and, as a consequence, does not establish any difference among terrorisms with respect to their origins or pretended justifications. Some quarters might disagree, on political or intellectual grounds, but while it is true that terrorist movements and actions around the world do have a wide variety and might need a significant degree of domestic and international tailored approach, the universal banning of terrorism remains vital if we want to successfully implement "the values which lie at the heart of the Charter of the United Nations" and which "terrorism attacks", in the words of the report.

The High-level Panel Report (HLPR) is worth commending on the paragraphs dedicated to "defining terrorism" for a good number of solid reasons. In the first place, it dares to make reference to the elements which should be included in the long-sought definition. The comparison with previous and contemporary attempts at that, including the ones already undertaken by the Sixth Commission of the GA and the one already mentioned in SCR 1566, allows to realise that, conceptually, the way forward should be neither too difficult nor too long. The report rightly underlines the political and not so much legal aspect of the dilemma: "the United Nations must achieve the same degree of normative strength concerning no-State use of force as it has concerning State use of force". It dares to remember and to remind that nothing, not even occupation, "justifies the targeting and killing of civilians" and that the "States' use of armed force against civilians", is already included in the "legal and normative framework against State violations", described to be "far stronger than in the case of non-State actors".

The Secretary General took a further step in his address in the closing ceremony of the Madrid Conference held in Madrid from 7 to 10 March 2005 to commemorate the first anniversary of the tragic terrorist attacks in the capital of Spain in March 2004. On this occasion, the Secretary General outlined a comprehensive strategy for the United Nations in the fight against terrorism, which drew on the report of the High-level Panel on Threats, Challenges and Change. In his speech, the Secretary General enumerated the main elements of that strategy, and the role of the United Nations in it.

There are five elements, the so called "five D's":

- first, to dissuade disaffected groups from choosing terrorism as a tactic to achieve their goals;
- second, to deny terrorists the means to carry out their attacks;
- third, to deter states from supporting terrorists;
- fourth, to develop state capacity to prevent terrorism;
- fifth, to defend human rights in the struggle against terrorism.

The Secretary General stated that all Departments and Agencies of the United Nations can and must contribute to carrying out the UN strategy against terrorism. For this purpose, the SG will create an implementation task force which will meet regularly to review the handling of terrorism and related issues throughout the UN system, and make sure all parts of it play their proper role.

In the weeks and months to come, even before the Summit next September decides to endorse the "comprehensive strategy on terrorism", efforts should be made within the Sixth Committee of the GA to try and put together the elements of the definition. The HLPR could turn out to be a useful tool in that respect. "Achieving a comprehensive convention on terrorism, including a clear definition, is a political imperative", reads the report.

The literature produced in the wake of September 11, its scope and consequences, is today innumerable. Its effects on international life are equally countless and no less evident. From the point of view of the United Nations, which is to say, from the point of view of the international community, September 11, in the extent to which it means the definitive awareness of the impact of a total and annihilating terrorism, is comparable to the fall of the Soviet Union and the following end of the Cold War. The post-Soviet decade of the Nineties allowed for the luxury of being able to put aside the obsessive worries about security of decades before, in order to concentrate on the recovery of peace, on development, on the promotion of human rights and fundamental freedoms and on the proposal of democracy as a definitive factor in stability. In a perverse way, September 11 has

made us return, without wanting to, to the bad times of bipolarity, when everything was reduced to the simplicity of the adverse relationship and its demands. The current dilemma which the UN confronts, just as the whole world does, consists of responding to the challenge without abandoning the features which have made our civilisation possible, and particularly those which made possible the birth of the United Nations and its endurance through time, the most perfect, or the least imperfect, organisation of those which humanity has known in its long and controversial history. Once again, it is about winning against the dark forces of totalitarianism. It can be expected from the United Nations that clarity of judgment, firm will and a sense of history will show themselves to the extent which international society expects. The provisional balance that is offered here allows for the accommodation of a grand hope in that respect.